

**Statement of
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Introduction

Mr. Chairman, thank you for the opportunity to appear and testify in today's oversight hearing marking the twentieth anniversary of the Inspector General (IG) Act of 1978.

It is fitting that a retrospective look at Federal Inspectors General (IGs) should be presided over by this Committee, which has been so instrumental in our creation, promotion and development.

I am also personally gratified to be asked to testify concerning the evolution of statutory IGs in the Executive Branch. I have had the unique advantage of being a participant in much of this evolution, having served as the Inspector General in five different Federal agencies since 1979.¹ I was also privileged to serve as Vice-Chair of the President's Council on Integrity and Efficiency (PCIE) from 1994 to 1997, during which time I had the opportunity to work with the entire IG community on issues of common interest.

I must note that I testified before this Committee as the sitting Inspector General of the Defense Department, at the oversight hearing on the occasion of the *tenth* anniversary of the IG Act in 1988. With your permission, Mr. Chairman, I would hereby like to reserve a seat to testify at the hearing marking the 30th anniversary of the IG Act in the year 2008.

The Office of Inspector General (OIG) at HHS is actually celebrating its 22nd birthday. We were established as the first statutory OIG in 1976, and just two years later, our legislation served as a model for statutory IGs throughout government. Our 22-year history has been an eventful and productive one; it would be difficult to mention even the highlights within the limits of a hearing. So at the request of the Committee, I would like to focus my remarks on my observations of some issues facing the IG community today, and changes that might help the IGs better realize the promise of the original legislation.

In a nutshell, I believe that the last two decades have demonstrated that the overall structure of the IG Act is sound and does not need to be fundamentally altered. Certainly there are occasional roadblocks to OIG effectiveness that could be legislatively removed; I will discuss some of these later in my statement. But first, I would like to address what I believe to be some of the most

¹ The Department of the Interior, the National Aeronautics and Space Administration, the Department of Defense, the Social Security Administration and currently, the Department of Health and Human Services. I also served as the Inspector General of the Pacific Fleet; a position not covered by the IG Act of 1978.

important challenges to be met by IGs as we enter our third decade. They are: fulfilling our dual role to both detect *and prevent* fraud, waste and abuse; fostering collaboration both within and outside the various OIGs; and learning to meaningfully measure our performance.

Prevention as well as Enforcement

Rightly or wrongly, many currently view the Inspectors General as focusing almost exclusively on enforcement, with an eye toward prosecution or recovery of misspent funds. Such enforcement has been and remains a key role of the Inspectors General. After all, wrongdoers must be identified and removed from continued abuse of Federal programs, and their ill-gotten gains returned. Thus, individual audits, investigations and evaluations serve critical functions — to protect the fiscal integrity of programs such as Medicare, to safeguard their beneficiaries, and to deter other would-be abusers.

We at HHS are also keenly aware that the IG Act directs IGs both to detect and prevent fraud and abuse in agency programs. Preventive efforts can amplify the effectiveness of OIG activities by instituting legislative, regulatory and operational change in a given program or operation. We are proud that we have recently redoubled our commitment to activities designed not just to uncover existing fraud and abuse, but to avoid it. Most of these efforts, described briefly below, are based on the realization that the Government, alone, cannot solve the problem of fraud. Instead, we must inform and educate the public, including the provider and beneficiary communities, and enlist their help in avoiding impropriety. For example:

- ! **Beneficiary Outreach** - The OIG is engaged in an ongoing project with HHS components and various advocacy groups to implement an outreach campaign to educate beneficiaries and others who work directly with the elderly to recognize Medicare and Medicaid fraud and abuse when they encounter it, and to know how and where to refer it.

- ! **Model Compliance Guidelines**: As part of our effort to promote voluntary compliance with applicable statutes, regulations and program requirements, the OIG is working with the industry to develop and issue a series of compliance guidelines tailored to individual health care services. For example, we have already issued model guidance pertaining to hospitals and clinical laboratories. Other guidelines are in the works. We believe that these models will assist health providers in averting fraud and abuse or detecting it at an early stage when it is more easily corrected.

- ! **Industry Guidance**: Under the Health Insurance Portability and Accountability Act (HIPAA), passed in 1996, the OIG now issues formal advisory opinions to the industry on the legality of business arrangements, thus offering one-on-one assurances that proposed transactions are permissible under HHS rules. We also issue Special Fraud Alerts to warn

the industry and public at large of vulnerabilities in the health care industry that make it susceptible to abuse.

- ! Corporate Integrity Agreements: The OIG is committed to including corporate integrity provisions in major settlement agreements reached as a result of OIG investigations or audits. These agreements require the provider to carefully monitor its own activities to ensure that the company complies with applicable rules. Failure to do so may result in the automatic exclusion of the provider from participation in Federally funded health benefit programs.

Another key aspect of our prevention initiatives has been to step up our efforts to exclude offending providers from future participation in Federal health programs. Such exclusions serve the dual purpose of preventing continued payments to providers deemed untrustworthy, and protecting our beneficiaries from substandard care. We are proud that during FY 1997, the first year of the Health Care Fraud and Abuse Control Program established by the HIPAA, the number of such exclusions nearly doubled from 1,408 to 2,719. Most were based on convictions for program-related crimes. Let me add that during the first year of HIPAA, nearly \$1 billion was restored or transferred to the Medicare Trust Funds.

I must note that our recent expansion in prevention efforts has been made possible in part by the increased resources earmarked for health care anti-fraud activities under HIPAA. I believe that these or similar prevention efforts — funding permitting — would prove equally beneficial at other OIGs within the community.

Increased Coordination

A very noticeable evolution in the Office of Inspector General at HHS has been the marked increase in coordination among our components. Gone are the days when investigators worked exclusively with investigators; auditors with auditors, and so on. Now, an OIG investigative team might be comprised of one or more investigators, statisticians, auditors and attorneys, all working together to unravel complex fraud schemes. As you are likely aware, there has even been a new “profession” born of this collaboration — the “audigators” — who are auditors trained at the Federal Law Enforcement Training Center to provide critical financial analysis and support to complex false claims cases.

Those who have worked with me will attest to the fact that I am adamant that there be true collaboration and teamwork within the OIG. I firmly believe that beneficiaries and taxpayers alike are ill-served by rivalries within OIG components, and among law enforcement agencies. I am proud that our recent history amply demonstrates the benefits of such enhanced coordination.

In addition to internal coordination, the effectiveness of the OIG depends heavily on cooperation with other agencies. Last year, the Government completed a two-year demonstration project, Operation Restore Trust (ORT), which tested whether closer collaboration among law enforcement agencies and the affected program agencies at Federal and State levels would result in greater effectiveness and efficiency in preventing and detecting fraud and abuse in certain targeted health services. ORT confirmed that the combined energies of these enforcement and oversight officials reduce duplication of effort, streamline referrals, and maximize the effectiveness of health care anti-fraud efforts.

In 1996, Congress affirmed the coordinated approach to addressing health care fraud by enacting HIPAA, which requires the Attorney General and the HHS Secretary, acting through the IG, to institute a Health Care Fraud and Abuse Control Program that coordinates “Federal, State and local law enforcement programs to control [health care] fraud and abuse.” This approach, to link enforcement efforts from the Federal to the local levels of government, is even more vital as complex fraud schemes continue to proliferate throughout the country.

How to Measure Performance of the Inspectors General?

The Government is undergoing a marked shift in how it assesses the success of Federal programs and operations. As evidenced by the Government Performance and Results Act, new emphasis has been placed on an agency’s ability to measure its own performance against clearly stated goals. Some of us in the IG community are still struggling with how best to evaluate the performance of our enforcement and oversight functions.

The most obvious measurement is strictly quantitative — how many investigations or audits were undertaken? how many convictions resulted? how much money was returned to Federal coffers? This numerical assessment is encouraged by our statutory reporting obligations under the IG Act, HIPAA and elsewhere, which require that such figures be reported. But these reports leave the impression that IGs may be too “dollar driven,” seeking to justify their existence only through tangible financial recoveries. This is misleading, and devalues our efforts to prevent fraud and abuse.

Measurement of our prevention work is much more elusive. In some cases, we may rely on external calculations, such as the Congressional Budget Office’s estimates of savings resulting from implemented legislative recommendations arising from OIG reports. More often, no such objective estimates exist. We are left uncertain how to calculate the benefits derived from prevention efforts such as provider and beneficiary education and outreach, deterrence arising from well-publicized prosecutions of or settlements with offending health care providers; or exclusion of health care providers from continued participation in programs such as Medicare and the resulting protection of the Trust Funds and the quality of care provided to our beneficiaries.

In years to come, we in the IG community must work within our agencies and the Administration, and with the Congress to develop meaningful performance measures, other than monetary ones, that will more accurately depict the breadth of OIG efforts.

Internal versus External Focus

There continues to be a perception that the proper role for IGs is an internal one; that we should devote our resources to investigating the conduct of agency employees, and auditing the Department's operation of its programs. Certainly these internal reviews are among the most vital and sensitive performed by OIGs. A good example is the annual audit of the financial statements performed under the Chief Financial Officers Act. But we need to correct any misperception that internal reviews are, or should be, our sole focus. On the contrary, our mission to detect fraud in the Department's programs also includes the critical role of investigating and auditing *external* entities — those who receive funds from HHS by way of grant, contract, cooperative agreement, compact or other funding mechanism — to ensure that the funds are properly received and lawfully spent.

If the OIGs of large agencies, such as ours, ever did focus exclusively on internal reviews, it seems to me that those days are gone. Indeed, at HHS, the recent HIPAA legislation that I have often referenced during this testimony, carries this evolution a step further. In that law, the Congress authorized the OIG of HHS to coordinate or conduct investigations, audits and inspections "relating to the delivery of and payment for health care in the United States," whether the services were paid by Medicare, or by *wholly private insurance*. With this, the OIG is authorized to expand even beyond the boundaries of the parent agency to oversight of health care generally. The HIPAA model is an unusual one; but it does illustrate that a dual role of both internal reviews, and external investigations and audits, best ensures the continued integrity and solvency of our agency programs.

Let me now turn to some more specific issues facing the IG community that relate to the powers, authorities and requirements of the IG Act.

Recruitment and Retention of IGs

In our conversations, Subcommittee staff reported that concerns have been expressed that the pool of qualified, willing candidates for positions as Inspectors General may be shrinking. If this is so, it may be attributable to certain disincentives to IG service, among them, the uncertainty of continued employment, particularly during changes in administration.

! Term of Office: In creating statutory IGs, Congress intended to insulate these officials from political influences. For example, the IGs must be selected without regard to political affiliation and solely on the basis of merit. If we are to be appointed without regard to political affiliation, we should be permitted to serve that way, too. However, history has shown that changes in administration may cause lengthy periods of uncertainty in the IG community. Many months can go by while IGs await news of whether their services will be continued under a new administration — the resulting “limbo” can inhibit OIG operations and staff. A fixed term of office would eliminate this uncertainty, and foster “business as usual,” even during a transition period. This would contribute to job security for those considering service as an IG. Of course, any term of office must be drafted so as not to impede the President’s ability to remove an Inspector General when warranted.

IG Reporting

The Subcommittee has asked whether I have suggestions on how to improve the quality or procedures for OIG reporting. I do.

! Proliferation of Mandatory Reports: First and foremost, I urge this Committee to assist the IG community in attempting to avert a troubling trend toward legislation that compels IG’s to perform specific audits and investigations, usually without a commensurate increase in resources to accomplish these reviews. I, for one, am very concerned that the mounting number of compulsory reviews diverts OIG resources from pressing and time-sensitive discretionary inquiries. Instead, each IG should be allowed the fullest measure of discretion possible in assigning resources to priorities within his or her respective agency. Alternatively, legislation that assigns extensive new auditing responsibilities to agency IGs should also include the resources necessary to accomplish them.

! Annual Reports; Highlights Section - It has been suggested that the Semiannual Reports currently required by the IG Act should be changed to annual reports. We would endorse such a modification. Although our HHS report, already quite long, would be even lengthier, we would continue to include an introductory section that highlights and directs the reader to significant reviews during the reporting period. Part of what contributes to the sheer volume of the HHS Semiannual Reports is the requirement that they include a listing of all audit reports, regardless of dollar amount, for which no management decision has been made. It would ease the administrative burden and shorten the Report, to permit IGs to limit this listing only to those audits where findings exceed a dollar threshold (perhaps \$25,000). Those audits would continue to be resolved as usual; but they would not be individually listed in the Semiannual Reports.

! 7-Day Letters - Under section 5(d) of the IG Act, an IG is to “immediately” alert his or her respective agency head in writing of any “particularly serious or flagrant problems, abuses, or deficiencies.” The agency head must, within 7 days, transmit this report to the Congress. Though the agency head may separately comment on the report, he or she may not alter it.

On occasion, IGs are questioned about our sparing use of these “7-Day letters.” I believe that these reports should be used only in the most serious circumstances, as a last resort when other avenues for corrective action have failed and immediate Congressional attention or intervention is warranted. This does *not*, however, mean that we fail to keep the Secretary or the Congress informed of imminent problems and deficiencies. On the contrary, through our Semiannual Reports, through personal meetings with the Secretary and Committee staffs, through our frequent testimony before the Congress, and otherwise, we communicate regularly with the Secretary and with Congressional oversight officials on matters of importance. Moreover, I believe that the 7-Day Letter provision of the IG Act, though rarely invoked, is a success. The mere availability of such a direct “crisis report” to the Congress serves as an incentive to resolve serious deficiencies before a 7-Day Letter is issued.

Law Enforcement Authority

I would be remiss if I did not address the issue of statutory law enforcement authority — that is, authority to execute search and arrest warrants, make arrests without warrants in certain circumstances, and carry firearms — for qualified investigators of the HHS Office of Inspector General. Ten years ago, my predecessor as Inspector General of HHS testified here on the urgent need for such tools, yet the matter remains unresolved a decade later.

Law enforcement authorities are central to the effective investigation of fraud against HHS programs and operations. More importantly, they are critical to the safety of OIG personnel.

Our need for law enforcement powers is amply illustrated by the fact over 95 percent of our 229 criminal investigators are currently deputized as Special Deputy U.S. Marshals under a variety of “blanket deputations,” covering health care cases, “deadbeat parent” cases and others. These deputations constitute a clear recognition by the Department of Justice that law enforcement tools are necessary to the effective and safe accomplishment of HHS investigations. A statutory grant of law enforcement authority would not enlarge the authorities that we are *already* exercising under deputations, at HHS; but legislative authority would remove the administrative burden and uncertainty of temporary, limited deputations.

We believe that it is time, even past time, to eliminate the piecemeal approach of our several blanket deputations, and confer upon HHS criminal investigators the statutory law enforcement authorities they have already been long and properly exercising. Relying on a patchwork of deputations for our law enforcement authority also raises more liability issues, not only for the OIG generally, but also for individual special agents.

We are pursuing this legislative proposal within the Executive Branch, in accordance with the Administration Policy Statement concerning statutory law enforcement, and hope to present it to this Committee and the Congress in the near future.

IG's Role in the Department

As a final matter, there has long been a debate over whether an Inspector General should properly be housed within the agency that he or she monitors. The fear is that if the IG has a close working relationship with the Secretary and is an integral part of agency management, the IG will be co-opted, and, as the cliché goes, turn from a watchdog to a house pet. I couldn't disagree more strongly.

At HHS, I am fortunate to enjoy an excellent and close working relationship with Secretary Shalala. Her very visible support of OIG efforts has served to mobilize management throughout the Department to greater awareness of fraud and abuse in the administration of agency programs, and to foster cooperation with IG inquiries. In addition, my participation as a full member of the Department's senior staff ensures that issues of waste, fraud and abuse will be considered as management decisions are made at the highest levels of HHS. I believe that isolating the IG from agency management would do serious damage to our ability to prevent and detect fraud and abuse.

Ironically, while some in Congress may be uneasy that Inspectors General will lose a measure of independence by working in partnership with agency managers, those agency managers similarly wonder whether the IGs are aligned too closely with Congress (indeed, I do have an effective working relationship with many Committees of the House and the Senate). I am actually comforted by this continuing tension. I believe it signals that the balance between the IG's "two masters" is fostering the independence envisioned by the Congress in creating OIGs.

Conclusion

Thank you again for the invitation to testify today. While my remarks have suggested certain provisions of the IG Act that may warrant closer examination, I do not believe that a wide restructuring of the IG Act is necessary or wise. The concept, created by the Congress 20 years ago, of an internal yet independent unit within each Federal agency charged with preventing and

detecting fraud and abuse in that agency, has, in my belief, proved a success. I welcome your questions.